

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

05CXT0054WL (50337-1160)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on _____

Signature _____

Typed or printed name _____

Application Number

10/688,527

Filed

October 17, 2003

First Named Inventor

Wentink

Art Unit

261

Examiner

Andrews, Leon T.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/ BAB /

☐ assignee of record of the entire interest.
 See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
 (Form PTO/SB/96)

☒ attorney or agent of record. _____
 Registration number 58,169

☐ attorney or agent acting under 37 CFR 1.34. _____
 Registration number if acting under 37 CFR 1.34 _____

Signature

Benjamin A. Balser

Typed or printed name

(770) 933-9500

Telephone number

May 28, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
 Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Wentink

Serial No.: 10/688,527

Filed: October 17, 2003

Confirmation No.: 7957

Group Art Unit: 2616

Examiner: Andrews, Leon T.

Docket No.: 50337-1160

For: Dynamic Transmission Protection in the Presence of Multiple Modulation Schemes

**REMARKS IN SUPPORT OF
PRE-APPEAL BRIEF CONFERENCE**

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicant submits the following remarks in support of a Request for a Pre-Appeal Brief Conference.

REMARKS

Applicant submits that the following clear legal deficiency exists in the rejection. Namely, the previous Office Action equates the ability to enter into a PARK mode with **determining** a power save status of a first station, which are two functions that are technically very different from each other. Even if the cited reference, *Awater*, discloses a park mode in a Bluetooth radio, as pointed out on page 2 of the Advisory Action mailed April 4, 2008, *Awater* fails to disclose a step of determining if the station is in power save mode. There is no determination step in *Awater*. Therefore, *Awater* fails to anticipate the claims.

I. Status

Claims 1-37 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by *Awater, et al.* (U.S. Patent No. 7,046,649).

II. Rejections of Independent Claims 1, 6, 8, 16, 23, and 24 Under 35 U.S.C. §102

Independent claims 1, 6, 8, 16, 23, and 24 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by *Awater, et al.* (U.S. Patent No. 7,046,649). Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Awater* does not disclose, teach, or suggest at least **determining a power save status of a first station**. Even if, assuming for the sake of argument, *Awater* discloses a park mode in a Bluetooth radio, *Awater* fails to disclose a step of determining if the station is in power save mode. There is no determination step in *Awater*. Additionally, *Awater*

fails to enable transmission protection at a second station based on the determination of the power save status.

The Advisory Action appears to argue that *Awater* discloses placing a station in Park Mode (condition A) when a IEEE802.11 transmission takes place (condition B). This is different from enabling transmission protection (condition C) if a station is in a power save mode (condition A'). In other words, *Awater* disclose if B, then A, whereas the claims recite if A', then C. Therefore, Applicant respectfully submits that the disclosure of *Awater* fails to anticipate claim 1.

Independent claims 6, 8, 16, 23, and 24 are allowable for similar reasons. Dependent claims 2-5, 7, 9-15, 17-19, 21-23, and 25 are allowable for at least the reason that dependent claims 2-5, 7, 9-15, 17-19, 21-23, and 25 contain all the features of independent claims 1, 6, 8, 16, 23, and 24.

CONCLUSION

For at least the reasons set forth above, favorable reconsideration and allowance, or the re-opening of prosecution on the merits of the present application and all pending claims are hereby courteously requested.

Respectfully submitted,

**THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, L.L.P.**

/BAB/

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